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August 14, 2023

VIA ECF

Hon. Denise Cote
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

CC: All Counsel of Record, Via ECF

RE: Schottenstein, et al., v. Lee, et al.; Index #22-CV-1197 (DLC);
Request to File Sealed Documents

Your Honor—

*The request to file the exhibits A-D
under seal is granted. The request
to redact the declaration of
8/14/23 is denied.*

*Denise Cote
8/15/23*

I represent Defendants Derek Lee and Pearl Chan in the above-referenced matter. Pursuant to this court's Individual Rules and in conformity with the court's standing order, 19-mc-00583, and ECF Rules & Instructions, section 6, I write to request permission to file sealed documents related to an anticipated motion to briefly stay the present matter pending resolution of a related arbitration Plaintiffs have with Citibank. See Dr. Douglass Schottenstein, M.D., and Thompson Real Estate, LLC v. Citibank, N.A., 21-cv-01806 (JPC), now being arbitrated on consent at JAMS, Ref. No. 1425035175, by District Court Judge Garrett E. Brown, Jr. (Ret.) September 19-21, 2023.

I request that the Court allow me to file the letter motion, and the accompanying declaration and exhibits, at the viewing level of *Selected Parties*, with copies served on court personnel and attorneys appearing for all case participants, as the information is subject to a protective order (DCKT. 60), and includes documents marked "confidential" by Plaintiffs in both the Citibank arbitration and the instant case, and responsive testimony regarding the content of said documents.¹ Notwithstanding Plaintiffs' decision to mark *every piece* of what little they produced as "confidential," and Defendants' objection to those designations regarding the subject documents, Defendants are submitting this material under seal out of an abundance of caution,² until such time as Plaintiffs' objections are addressed.

The thrust of the Citibank arbitration, as with the present case, involves allegations that Derek Lee and Pearl Chan made unauthorized transfers of Schottenstein's Citibank funds to an account controlled by Derek Lee in February and March of 2020.

¹ This includes Exhibits A-C of Defendants' Stay motion, but *not* Exhibit D, which consists of text messages between the parties, produced by the defendants, which are not subject to any protective order.

² See Flaherty v. Filardi, 2009 U.S. Dist. LEXIS 104773, 2009 WL 3762305, *5-6 (S.D.N.Y. 2009) (finding plaintiff in contempt and awarding attorneys' fees for plaintiff's violation of protective order).

Substantial evidence adduced in both matters shows the subject transactions took place in an office culture where subordinates were not only enabled but highly paid to carry out all manner of personal, often illegal, transactions for Schottenstein or face dramatic pay cuts, vindictive rages, or both. In this case, the transactions were authorized as off-the-books payments to Lee and Chan for, among other things, procuring and manufacturing illegal drugs for him, and acting as “fixers” for a plethora of inappropriate and/or illegal conduct, which included texting nude and/or overtly sexual photos of himself, and regularly engaging in illicit drug use while on duty in his medical office.

If, as expected, the overlapping Citibank arbitration resolves that the February/March 2020 transactions were authorized by Schottenstein, the preclusive effect of that ruling will also resolve the heart of Schottenstein’s claims against Lee and Chan here and avoid the possibility of piecemeal factfinding, and/or time and resources being expended to subject matter already under review in another venue.

Per the court’s rules, the proposed sealed documents are being contemporaneously filed under seal in the ECF system and electronically related to this motion.

Defendants thank the court for its consideration.

Respectfully,

/s
Jeffrey Chabrowe, Esq.
Attorney(s) for Defendants
Derek Lee and Pearl Chan